

PT 97-65

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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McHENRY AMERICAN	)	
LEGION POST	)	Docket No: 95-56-75
NO. 491, INC.	)	
APPLICANT	)	
	)	
v.	)	Real Estate Exemption
	)	for 1995 Tax Year
	)	
STATE OF ILLINOIS,	)	P.I.N.: 09-26-453-011-0060
DEPARTMENT OF REVENUE	)	
	)	
	)	
	)	Alan I. Marcus,
	)	Administrative Law Judge

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RECOMMENDATION FOR DISPOSITION

SYNOPSIS:

This proceeding raises the limited issue of whether real estate identified by McHenry County Parcel Index Number 09-26-453-011-0060 (hereinafter the "subject parcel" or the "subject property") should be exempt from 1995 real estate taxes under 35 ILCS 200/15-145,<sup>1</sup> which states as follows:

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1. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), (hereinafter "Bracher"), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1995 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 et seq).

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt [from real estate taxation].

35 ILCS 200/15-145.

The controversy arises as follows:

On August 17, 1995, the McHenry American Legion Post No. 491 (hereinafter the "Legion" or the "applicant") filed an Application for Property Tax Exemption with the McHenry County Board of Review (hereinafter the "Board") (Dept. Group Ex. No. 1). The Board reviewed applicant's complaint and subsequently recommended to the Department of Revenue (hereinafter the "Department") that the requested exemption be granted. (Dept. Ex. No. 1).

On December 29, 1995, the Department rejected this recommendation by issuing a determination finding that the subject parcel was not in exempt use. (*Id.*). The Legion subsequently filed a timely appeal as to this denial and thereafter presented evidence at a formal administrative hearing that took place on August 29, 1996. Following submission of all evidence and a careful review of the record, it is recommended that the subject parcel not be exempt from 1995 real estate taxes.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position therein, namely that the subject parcel was not in exempt use during 1994, are established by the admission into evidence of Dept. Group Ex. No. 1.

2. Applicant acquired its ownership interest in the subject parcel, which is improved with a one-story building that measures 24' x 90,' via a warranty deed dated July 1, 1989. Dept. Group Ex. No. 1; Tr. p. 7.

3. An Affidavit of Use dated August 17, 1995 indicates that:

A. The subject parcel is used for Legion meetings, Auxiliary meetings, Rifle Squad meetings, Baseball meetings and Sons of the Legion meetings;

B. Legion and Sons of the Legion meetings are held on the 2nd Monday of the month, the Auxiliary holds its meetings on the 3rd Monday of the month and the Rifle Squad holds its meetings on the 4th Monday of the Month; and,

C. "Last year[,] the Legion "took in" \$245.00 from rental of the hall from members having showers, birthday parties and small gatherings at the hall.

Dept. Group Ex. No. 1.

#### **CONCLUSIONS OF LAW:**

An examination of the record established that this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject parcel from 1995 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject parcel does not satisfy the requirements for exemption set forth in 35 ILCS 200/15-145 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 *et seq.* The governing provisions of that statute are, for present purposes, found in Section 200/15-145. That provision states as follows:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt [from real estate taxation].

35 **ILCS** 200/15-145.

It is well established in Illinois that statutes exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968) (hereinafter "Nordlund"); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Here, the appropriate exemption pertains to "property of veteran's organizations." Consistent with the above rules, our Supreme Court has interpreted that exemption very narrowly and limited its application to the following circumstances:

... In order to qualify its property for exemption the party seeking it must prove that it is the type of organization or institution described in the applicable exempting statute and that its property is exclusively used for the purposes set forth in the act. [citations omitted]. Specifically, the plaintiff need not here prove that it is a charitable institution but rather *that it is a veteran's organization and that its property is used exclusively for charitable, patriotic and civic purposes.*

North Shore Post No. 21 of the American Legion v. Korzen, 38 Ill.2d 231, 234 (1967) (hereinafter "Post No. 21"). (Emphasis added).

This applicant's primary obstacle to exemption under the above criteria is lack of evidence as to exempt use. Specifically, the record does not contain a scintilla of competent evidence establishing that the subject property was used for exempt purposes during 1995.

The Affidavit of Use is technically hearsay, and thus, not competent to establish the truth of the matters asserted therein. However, I must give this document its normal probative value and thereby notice that it makes no specific mention of applicant's use during the 1995 tax year. The reference to "last year" in the final paragraph must be interpreted as an allusion to the 1994 tax year because the document is dated August 17, 1995. Given that each tax year constitutes a separate cause of action for exemption purposes, (See, Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981)), I must conclude that the Affidavit of Use is at worst irrelevant, and at best non-dispositive of the present inquiry, which is whether the subject property satisfied the statutorily imposed use requirements during 1995.

The testimony of applicant's sole witness, Mr. William H. Walter, does not alter the preceding conclusion. Mr. Walter, who was the Legion's financial officer, testified that applicant allowed "different people to use the property ... without cost." (Tr. pp. 6). He further testified that "we do a lot of public community work [including giving flags to schools] and we make no revenue. (Tr. pp. 6 - 7). However, Mr. Walter also indicated that "we are not open to the public." Tr. p. 8.

Much of the above testimony amounts to conclusory statements which, per the above rules, are legally insufficient to sustain

applicant's burden of proof. Furthermore, the last statement almost *ipso facto* defeats exemption because it establishes that the Legion operates primarily for social and fraternal purposes.

Our courts have consistently held that such operations do not qualify as "charitable" because the primary recipients of any benefits associated therewith are the actual members of the veteran's organization. As such, any public benefits derived from the non-exempt social and fraternal operations are incidental thereto, and therefore, legally insufficient to satisfy the aforementioned use requirements. Post No. 21, supra; Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956).

These requirements are, per the plain language of Section 200/15-145, specifically limited to those which qualify as "charitable,<sup>2</sup> patriotic and civic." Moreover, the Legislature's use of the conjunction "and" establishes that applicant can not sustain its burden of establishing exempt use without presenting affirmative evidence of all three uses. Post No. 21, supra. Consequently, where (as here) applicant does not satisfy one of the three use requirements, (and presented little, if any evidence, as to the other two), its attempt to obtain exemption under Section 200/15-145 necessarily fails. Therefore, the Department's decision denying said exemption should be affirmed.

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<sup>2</sup>. For extensive analysis of the requirements for charitable status, see, Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968).

WHEREFORE, for all the above-stated reasons, it is my recommendation that McHenry County Parcel Index Number 09-26-453-011-0060 not be exempt from 1995 real estate taxes.

\_\_\_\_\_  
Date

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Alan I. Marcus  
Administrative Law Judge